Exhibit 9

BEFORE THE UNITED STATES
DEPARTMENT OF JUSTICE
ANTITRUST DIVISION

Proposed Local Marketing Agreement
between

SINCLAIR BROADCAST GROUP, INC.
and
RIVER CITY BROADCASTING, L.P.

File No. ________

MEMORANDUM ON BEHALF
OF
SINCLAIR BROADCAST GROUP, INC.
AND
RIVER CITY BROADCASTING, L.P.

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August 29, 1997

Introduction and Summary

This submission is made in support of the proposed Local Marketing Agreement (LMA) between WTTE Channel 28 and WSYX Channel 6 in Columbus, Ohio. WTTE is owned by Sinclair Broadcast Group, Inc. (Sinclair). WSYX is owned by River City Broadcasting, L.P. (River City). The parties' objective in concluding the LMA is to allow WSYX and WTTE, the third- and fourth-ranked stations in Columbus, to compete more effectively with the other stations and other media in the market for local advertising dollars. As explained below, on the basis of Sinclair's experience with LMAs in other markets, the parties expect that this LMA will not only enhance the two stations' competitiveness vis-a-vis their other media rivals, but will also generate real efficiencies and significant benefits for advertisers.

These benefits will not be achieved at the cost of higher advertising prices or lower output in Columbus. We discuss three reasons for this conclusion. First, in a properly defined relevant market the combined WSYX/WTTE share of advertising revenues is simply too low to raise competitive concerns. Second, even if, contrary to all available evidence, the relevant market for purposes of analyzing this transaction were defined very narrowly (e.g., as broadcast and cable local television advertising), the parties' aggregate share would still be below the level the Department has indicated in radio merger cases is sufficient to give rise to anticompetitive concerns. Finally, even if that threshold were met, the two potential anticompetitive effects the Department has identified in such cases are not present here.[1/] First, the heterogeneity and perishability of television advertising preclude the possibility that the LMA could facilitate collusion among the Columbus stations. Second, the nature of local television programming (which, unlike radio formats, is designed to appeal to a wide variety of demographic groups) and the fact that WTTE and WSYX are not each other's closest substitutes in any advertising daypart would prevent either station from being able profitably to raise its rates unilaterally once the LMA was in place.

In view of the substantial efficiencies and advertiser benefits the LMA is expected to generate, and the absence of any likely anticompetitive effects, the Department should clear this transaction expeditiously.

Overview of the Transaction

The proposed LMA was originally part of a transaction notified to the Department on April 11, 1996, under which Sinclair agreed to acquire for approximately $1.2 billion substantially all of River City's assets. Those assets included the non-license assets of WSYX-

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1/ See Hon. Joel I. Klein, "DOJ Analysis of Radio Mergers," Speech presented at the ANA Hotel, Washington, D.C. (February 19, 1997) at 11.

TV in Columbus, Ohio. The Asset Purchase Agreement (the "Agreement") provided that Sinclair would program WSYX pursuant to an LMA, under which Sinclair was to obtain the rights to advertising revenues generated by that programming.[2/] In addition, the Agreement transferred certain employee contracts and assets to Sinclair and provided that the parties, upon closing of the transaction, would enter into an Option Agreement under which Sinclair would have the option to purchase WSYX's remaining assets, including its Federal Communication Commission (FCC) broadcast license.

The Department subsequently communicated to the parties that it would need additional information in order to evaluate the competitive effects of the LMA. In order to allow the other parts of the transaction to proceed, the parties agreed to modify the Agreement to eliminate the provisions relating to the acquisition of the WSYX assets and the Columbus LMA and to submit another Hart-Scott-Rodino filing reflecting this modification. In addition, the parties committed to provide the Department with thirty days written notice before entering into an LMA with WSYX, along with a copy of the proposed agreement. They also agreed that if within the thirty-day notice period the Department were to request additional information and documents concerning the proposed LMA, they would not implement the LMA until 20 days after they had substantially complied with the Department's request. (Tab 1).

Pursuant to these undertakings the parties are now submitting to the Department the enclosed "Time Brokerage Agreement" (the LMA). (Tab 2). The LMA commits Sinclair to provide WSYX with at least 166 hours of programming per week and in exchange entitles the company to receive a monthly fee, as well as all the advertising revenues derived from the programming it supplies. Sinclair and River City contemplate that, absent a material breach by either party, the LMA will continue until the date of consummation of the purchase of WSYX assets, as provided for in the Asset Purchase Agreement and Option Agreement, or until the expiration of the exercise period contained in the Option Agreement.

Reasons for the Proposed LMA

WSYX (an ABC affiliate) and WTTE (a Fox affiliate) are, and have been for many years, the third and fourth-ranked television broadcast stations in Columbus. The top-ranked station, WBNS (the CBS affiliate), is owned by the Dispatch Printing Co ("Dispatch"). Dispatch also owns the principal daily newspaper in Columbus, *The Columbus Dispatch*, as well

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2/ Under the FCC's duopoly rule, television station owners are prohibited from owning more than one station in a given local market or DMA. The FCC rules do, however, permit the owner of one station in a market to program a second station in the same market pursuant to an LMA.

as two radio stations,[3] and it recently launched an all-news cable channel, Ohio News Network (ONN). WBNS is particularly dominant in local news, which typically generates 35-45% of a television station's local advertising revenue; its news ratings exceed the ratings for the WTTE and WSYX newscasts combined.

The second-ranked station is WCMH. WCMH is an owned-and-operated NBC station. NBC also owns and programs the cable channels CNBC and MSNBC, both of which are carried on Columbus cable systems. Three years ago WCMH entered into a local marketing agreement with the fifth station in the market, WWHO.[4] WCMH is the dominant station in prime-time: NBC shows consistently claim over half of the slots in the Nielsen rankings of the top 20 shows during this daypart. Revenues from advertising sold on prime-time programs typically account for 15-25% of a network affiliate's revenues.

WTTE and WSYX are currently at a substantial disadvantage in competing for advertising revenue in Columbus. Neither station owns or is affiliated with another media property in the market. As a result, neither station has access to the cross-promotional and cross-selling opportunities available to its over-the-air television competitors. In addition, as two of the weakest stations in the market, both WSYX and WTTE face increasing competition for local advertising revenues from other media, including cable television and radio.[5] While exact numbers are not available, it is our understanding that Time Warner Communications and Coaxial, the two principal cable systems in Columbus, have experienced consistent growth in local advertising revenue over the past few years; indeed, all or most of the businesses currently advertising on the Columbus cable systems in the past placed their commercials on over-the-air television. With respect to radio, the consolidation permitted by the 1996 Telecommunications Act has enabled that medium to become even more competitive with local television; Jacor, for example, recently purchased seven radio stations in Columbus and can now pitch packages to advertisers that offer broad reach as well as targeted demographics.

3/ WBNS-AM and WBNS-FM.

4/ WWHO has recently been sold to Paramount. As a result of this transaction, the parties expect that the LMA with WCMH will be discontinued and that WWHO will become a UPN affiliate. WWHO is currently a Warner Brothers affiliate.

5/ When advertisers decide to reallocate their spending among the mix of media they use, it is typically the weaker firms (i.e., their secondary or tertiary buys) in the medium in which spending is being reduced that suffer the most. Because WSYX's and WTTE's programs generally draw lower ratings than do those of WBNS and WCMH, spots on their schedules are less likely to be viewed as "must buys" and retained when advertising dollars are shifted to other media.

The parties' object in entering into the LMA is to level the playing field in Columbus and enable WSYX and WTTE to compete more effectively for advertisers with the other media in the market. Sinclair has had extensive experience operating LMAs in other, comparably sized markets. On the basis of that experience, the parties expect that the proposed LMA will enhance the stations' competitiveness by allowing them to achieve substantial efficiencies and in the process will also yield significant benefits for advertisers. The projected efficiencies and advertiser benefits are outlined below.

- **Expanded output of local news.** In anticipation of the LMA, last fall WSYX and WTTE entered into a News Production Agreement (Tab 3), under which WSYX agreed to produce and staff a nightly 10 o'clock news program over WTTE's facilities. This agreement has resulted in the introduction of a fifth late-evening newscast in Columbus, which has been very successful (adding 2-3 news rating points to the market) and has increased the inventory of late-news spots available to advertisers.

If the LMA is not approved by regulatory authorities, it is unlikely that the news production agreement will continue beyond its 1998 expiration date. The arrangement is simply uneconomical for WSYX absent the savings anticipated from implementation of the LMA. As a result, the WTTE newscast (and the additional inventory it provides) will likely disappear from the market if the LMA is blocked; the cost to WTTE of independently producing a 10 o'clock news would be prohibitive and it is highly unlikely that another Columbus station would agree to produce news for WTTE for a fee remotely close to what WSYX has charged.[6]

On the other hand, approval of the LMA would facilitate the improvement of both stations' news products because the costs of upgraded equipment, more experienced personnel, and additional facilities could be spread over two outlets rather than one. These improvements would directly benefit advertisers by generating more rating points in this daypart and offering a more competitive alternative to the much higher-rated WBNS and WCMH newscasts. In addition, the cost savings achieved through the LMA may permit the two stations to increase further the inventory of late news spots in Columbus, e.g., by expanding the 10 o'clock newscast to an hour or by introducing a 6:30 p.m. news, as Sinclair has done in other markets in which it operates LMAs.[7]

6/ Sinclair estimates that introducing a 10 o'clock newscast on its own would cost WTTE $2 million in capital expenditures for equipment and $1.5 million per year for operating expenses. By contrast, the fee WTTE pays to WSYX under the News Production Agreement is only $400,000 per year.

7/ See, e.g., Jon Lafayette, "Two Baltimore Stations Put Spin on LMAs," *Electronic Media* (March 24, 1997) 1997 WL 8289143 (describing the addition of a 6:30 p.m. newscast on one of the Baltimore stations operated by Sinclair pursuant to an LMA).

- **Cost savings.** Using its experience in other LMA markets as a guide, Sinclair anticipates annual savings of $1.6 million (or 10% of the stations' total operating expenses) as a result of the consolidation in Columbus. The principal reductions are expected from the elimination of duplicative staff in engineering, traffic, sales and general administrative positions. In addition, Sinclair expects to be able to reduce the stations' promotional expenditures by 10-12% once they are able to make their advertising purchases jointly. Finally, consolidation of the stations in one facility should result in a substantial decrease in payments for, inter alia, rent, insurance, property taxes and utilities.

- **Cross-promotion.** As noted above, both the top-ranked Columbus television stations own or are affiliated with other media outlets in the market. Their affiliations afford those stations a form of free advertising that WSYX and WTTE do not enjoy. WBNS, for example, benefits from the ability to promote its programming in the *Dispatch*,[8] on its two radio stations, and on ONN. Similarly, WCMH and WWHO have benefitted from aggressively cross-promoting each other's programs, particularly their nightly newscasts, and even after WWHO becomes independent WCMH will continue to enjoy cross-promotional benefits from NBC's ownership of the cable channels CNBC and MSNBC.

The LMA would provide a means for WTTE and WSYX to redress this imbalance by allowing them to promote their programming over two stations and thereby potentially increase their combined audience, as viewers of one station are made aware of offerings on the other station that may appeal to them. Sinclair has witnessed the salutary effect of cross-promotions in some of its other LMA'd markets: in San Antonio, for example, the ratings of the San Antonio Spurs games on one of its LMA stations, KRRT, have clearly benefitted from the promotional spots run on the Dallas Cowboys games carried by Sinclair's owned station, KABB.[9]

- **Sales management consolidation.** If the LMA is approved, Sinclair expects to retain both stations' sales forces but to consolidate their management by appointing a single director of sales (DOS). This consolidation should allow the stations to compete more effectively for advertiser dollars by giving the DOS better information about demand and supply conditions in the market and more flexibility in developing attractive advertising packages, advantages that the dominant station in Columbus, WBNS, already enjoys by virtue of its affiliations with other local media.

8/ Advertising space on the page in the *Dispatch* that carries the daily television program guide, for example, is not available for sale to any Columbus station other than WBNS. See Tab 4.

9/ See also Lafayette, *supra* note 7 (describing Sinclair's plans for its owned station in Baltimore to cross-promote the newscasts on its LMA'd station).

At the moment WTTE is often the fourth call for advertisers looking to buy time on the local Columbus stations, and there are numerous firms that do not use WTTE at all for their television ads. Accordingly, although an advertiser may have a demographic and ratings target that some of WTTE's shows could help achieve, WTTE nevertheless might be shut out of the buy because the advertiser has only contacted the top three network affiliates or thinks of Fox shows as appealing only to young adults. With the LMA, if word of this buy came into WSYX, the DOS could use the information to have WTTE's salespeople submit an appropriate avail to the advertiser or to direct WSYX's sales staff to try and get WTTE's shows included. The same thing could be done for advertisers who approach WTTE, but not WSYX, and have needs that could be met by some of WSYX's programs.

Sinclair has observed this sort of cross-fertilization occurring in the other markets in which it operates LMAs. In San Antonio, for example, KABB (a Fox affiliate) may get a call for its prime-time avails which does not come to KRRT (a UPN affiliate) because the latter is a lower-ranked station in the market. In these situations, the DOS has alerted the KRRT staff to the inquiry and encouraged them to call the advertiser and ask for the opportunity to compete on the buy. Advertisers in Columbus similarly report that WCMH has frequently used the market intelligence received by its account executives to boost sales of spots on WWHO.

The LMA will also enhance the stations' competitiveness by providing the DOS with greater flexibility to assemble packages of attractive programming for advertisers and offer discounts for high-volume purchases.[10] For example, together WSYX and WTTE have a sizeable inventory of popular sports programming: with the LMA they could offer advertisers in one transaction tailored packages of desirable spots running on both stations. In addition, by enabling the DOS to package spots on the two stations' late newscasts for advertisers seeking to buy that daypart, the LMA will create a more viable alternative to WBNS and WCMH, whose newscasts consistently place #1 and #2 in the Nielsen ratings and draw almost twice the audience attracted by either WSYX's or WTTE's news program.

- **Complementary programming.** In other markets, Sinclair has succeeded in increasing the aggregate ratings of its owned and LMA'd stations by running complementary programming (i.e., shows that appeal to somewhat different, rather than completely overlapping, demographics) in their non-network dayparts. In Baltimore, for example, prior to the LMA of WNUV, the Sinclair-owned station (WBFF) and WNUV ran similar types of shows (i.e., sitcoms) during the same dayparts. After the LMA, however, WNUV began to run programming that appealed to a younger, more urban and ethnic audience during those time periods. By contrast, WBFF continues to run sitcoms, which are geared more to suburban viewers. The combined ratings of the Baltimore stations in these dayparts have improved with the LMA, thus making them more attractive to advertisers. Since the LMA was introduced in 1994, the stations'

10/ The latter practice is sometimes referred to in the industry as "packaging for share."

combined share of local advertising revenue has grown from 32% to 34%, an increase of a half-point each year. While the number of dayparts available for this kind of counter-programming is more limited in Columbus because WSYX and WTTE, as ABC and Fox affiliates, receive more hours of network programming that the stations in Baltimore do,[11/] Sinclair nevertheless expects that beneficial results can be achieved by applying the strategy in the time periods commonly referred to as "early fringe" (5:30-7pm), "prime access" (7-8pm) and "late fringe" (11:30pm - past midnight).

- **Digital conversion.** In April of this year, the FCC voted to require broadcasters to equip their facilities to transmit digital programming according to a strict schedule. Major network affiliates in the top 10 markets have until May 1, 1999, to get a digital signal on the air. Affiliates in markets 11-30 have until November 1, 1999. All other commercial stations, including those in Columbus, have five years to complete the transition.[12/]

The estimates of the investment required to convert a television station to digital vary widely, but are in the range of at least $3-5 million.[13/] Sinclair projects that if, as is planned under the LMA, WSYX and WTTE were operated out of a single facility, the digital conversion of the stations would cost $1-2 million less and could be accomplished much more quickly than if each station were to be upgraded separately.[14/] In Pittsburgh, for example, where Sinclair recently consolidated the operations of its owned and LMA'd stations in one facility, in addition

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11/ Network programming accounts for 20% and 40% of WTTE's and WSYX's schedules, respectively.

12/ See Chris McConnell, "DTV: The Work Begins," *Broadcasting & Cable* 6-7 (April 7, 1997). According to the *TV & Cable Factbook*, Columbus is 34th largest market in the country.

13/ See McConnell, *supra* note 12, at 7 (reporting ABC Vice President and Director of Engineering Robert Niles' estimate that it will cost $3-4 million per station to achieve the upgrade); Diana Mermigas, "Robert Wright Q&A: Challenges of a New Age," *Electronic Media* 1, 12 (May 12, 1997) (quoting the estimate of NBC President and CEO Robert Wright that it will cost "$3 million to $5 million a station" to convert to digital). Other estimates are even higher. The NAB, for example, has predicted that the "average cost to convert [a] station to digital and high definition television [will] be more than $8 million," Public Broadcasting Report (4/4/97) 1997 WL 8585664.

14/ In this regard, it is worth noting that the FCC has recognized the benefits of cooperative arrangements between broadcasters designed to spread the costs and accelerate the introduction of digital programming and has indicated that it will "look with favor on such arrangements." Federal Communications Commission, *In re Advanced Television Systems and Their Effect upon the Existing Television Broadcast Service*, MM Dkt. No. 87-268, Fifth Report and Order (April 21, 1997) at 27.

to building a news studio to accommodate the launch of a 10 o'clock newscast for the Fox affiliate, the company decided to install the technology and equipment necessary to make both stations digital-ready.[15] The price-tag of the addition and upgrade was approximately $6 million, which is $4 million less than it would have cost to convert two separate facilities, and which Sinclair determined was a cost-effective investment only because of the presence of the LMA.

The consolidation and upgrading of facilities that the LMA would effect in Columbus is especially important for WTTE and WSYX, because they are already considerably behind WBNS and WCMH in terms of advanced equipment and technology. For example, neither station has a Doppler radar, satellite truck or news helicopter; WBNS and WCMH both do.

Because WCMH is an NBC owned-and-operated station, Sinclair expects that it will move quickly to make the conversion.[16] Similarly, given its deep-pocketed owner and position as the top-ranked station in Columbus, there is little doubt that WBNS will convert to digital well before the five-year deadline. The WTTE/WSYX LMA would thus have the double advantage of securing the stations' ability to remain competitive with the other Columbus stations into the next century and of making their conversion to digital more cost-efficient and timely.

Competitive Effects

As the Department has recognized, once the parties to a horizontal agreement have demonstrated that their arrangement has the potential to produce substantial procompetitive benefits, no violation of the antitrust laws can be made out unless the arrangement also appears likely to have significant anticompetitive effects.[17] As discussed above, on the basis of Sinclair's extensive experience with LMAs in other markets, the parties expect the Columbus LMA to yield efficiencies that will both enhance the stations' competitiveness against stronger rivals and improve the offerings available to local advertisers.

15/ See "Digital Domain in Pittsburgh," *Broadcasting & Cable* 28 (April 9, 1997).

16/ Indeed, FCC Chairman Reed Hundt has praised NBC in particular for its commitment to accelerate the digital upgrade of its owned-and-operated stations. See Separate Statement of Chairman Reed E. Hundt, Re: Adoption of Digital Television Allotment and Service Rules Reports and Orders (April 3, 1997) at 5.

17/ See Hon. Joel I. Klein, "A Stepwise Approach to Antitrust Review of Horizontal Agreements," Speech before the American Bar Association's Antitrust Section Semi-Annual Fall Policy Program, the Westin Hotel (November 7, 1996) at 15.

Accordingly, in order to have a basis for challenging this transaction, the Department would need to show that the LMA is likely to have substantial adverse effects on competition for the sale of local advertising in Columbus. The attached white paper by Drs. McAnneny and Baumann of Economists, Inc. explains in detail why such a showing simply cannot be made in this case. In addition to discussing further the efficiencies outlined above, the paper makes four principal points.

First, Drs. McAnneny and Baumann determine that the appropriate relevant market in which to measure the competitive effects of the LMA is local advertising in all Columbus media, including over-the-air and cable television, radio, newspapers, direct mail and outdoor. This conclusion is based on interviews with numerous buyers of local advertising in Columbus, data revealing the historical patterns of media usage in Columbus, and two econometric studies of the effect of television-station concentration on television advertising rates and profitability. Considered in the context of this market, the combined share of WSYX and WTTE stations is less than 7%, far too small to raise competitive concerns.

Second, Drs. McAnneny and Baumann find that as the market definition is progressively narrowed by excluding various media, the aggregate WSYX/WTTE share does not reach the levels that have in the past attracted DOJ scrutiny until the definition is confined to broadcast and cable television. Even using this artificially narrow definition, the stations' combined share is only 33.9%, which is below the 35% threshold the Merger Guidelines require before potential harm from unilateral effects may be found and is also below the post-acquisition shares in the radio mergers that DOJ has challenged to date. In addition, Drs. McAnneny and Baumann note that even the 33.9% figure likely overstates the parties' competitive position because it does not take into account either the accelerating shift of viewers and advertising dollars to cable or the potential entry of a sixth commercial television station into the Columbus market.

Third, Drs. McAnneny and Baumann consider the possibility that, by facilitating collusion among the local television stations, the LMA could result in higher advertising prices in Columbus. They show that, as DOJ appears to have recognized, collusion in advertising markets generally is difficult because of the heterogeneity and perishability of the products. They then explain why this conclusion is equally applicable to television spots in Columbus: the spots are sold through private, individualized negotiations; the prices quoted change constantly depending upon the fluctuations of supply and demand in the market; and there is little transparency with respect to the rates advertisers actually pay for a given commercial.

Fourth, assuming *arguendo* that the parties' combined revenue share met the 35% threshold necessary for unilateral effects to be an issue, Drs. McAnneny and Baumann explain why a strategy of raising rates at one of the stations while keeping constant the prices charged by the other station would not be profitable and therefore should not be a cause of competitive concern. In order to have any hope of success, that strategy would require that WTTE and WSYX were the closest substitutes to each other for a large number of advertisers: otherwise, given the high variable contribution margins from television spot sales, the defection of even a small number of advertisers to other stations or media would be enough to render the price increase unprofitable. The evidence, however, precludes such a finding. For example, none of the advertisers the economists interviewed stated that they view WTTE and WSYX as their top two choices for targeting any demographic or conveying the message of any client; on the contrary, most said that they consider all the Columbus stations interchangeable and contact all of them for avails on every buy. In addition, because ABC supplies its affiliates with much more daily network programming than Fox does, there is a significant amount of non-overlap in WSYX's and WTTE's programming. Furthermore, according to recent Nielsen and Scarborough reports, WSYX and WTTE are not ranked first and second for any demographic in any daypart. More generally, there simply is no parallel to the threat to advertisers DOJ has perceived in radio-merger cases from the consolidation of two or more stations broadcasting the same format: commercial television stations all carry a variety of programs that appeal to different audiences -- none caters exclusively to a single demographic.

Even if there were a subset of advertisers for which WSYX and WTTE were the two favorite suppliers, the stations still could not profitably impose the price increase unless they were able to identify the buyers in this group and successfully price discriminate against them. As Drs. McAnneny and Baumann explain, the obstacles to price discrimination are almost certainly insurmountable. In the first place, identification of the captive advertisers would be difficult, if not impossible, because most buyers include other stations and other media in their campaigns and shift allocations frequently among those media. In addition, many of the local advertisers in Columbus make their buys through intermediaries (e.g., advertising agencies and media buyers) who would be able to recognize and resist the attempted price discrimination. The same is true for the typically large and sophisticated firms that purchase spots directly from the stations, and any advertiser that felt vulnerable to price discrimination could easily hire an agency to make its buys without revealing its identity.

Conclusion

As the only television stations in Columbus not affiliated with another local media property, WTTE and WSYX are currently at a substantial disadvantage in competing for advertising revenues with the other over-the-air television stations. In addition, they are facing increasing competition for advertiser dollars from other media in the market, including cable television and radio. The proposed LMA will help the parties overcome this handicap and, as the Sinclair experience in other LMA markets demonstrates, should yield significant efficiencies and benefits for advertisers.

The stations' enhanced competitiveness will not come at the cost of higher advertising rates or lower output. As the white paper explains, the stations' combined share of the properly defined relevant market is simply too low to trigger competitive concerns. Moreover, even if the relevant market were confined to broadcast and cable television, there is no basis on which a finding could be made that the LMA will either facilitate collusion among

Columbus television broadcasters or permit WTTE and WSYX profitably to raise prices unilaterally to any group of captive advertisers.

The Department should therefore approve this transaction without further delay.